

IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

RFA No. 12 of 2002 alongwith
Cross Objections No.352 of 2004

Reserved on : 12th July, 2007

Date of Decision: 18th July, 2007

H.P. State Electricity Board and others	Appellants
Versus	
Kuldip Kumar and others	Respondents

Coram

The Hon’ble Mr. Justice Sanjay Karol,J.

Whether approved for reporting¹? No.

For the appellants: Mr. Shrawan Dogra, Advocate.

For the respondents: Mr.J.L.Bhardwaj, Advocate, for respondents
No. 1(a) to 1(c).
Mr.B.C.Verma, Advocate, vice counsel for
respondent No.2.
Mr.M.L.Chauhan, Addl. Advocate General, for
respondent No.3.

Sanjay Karol, J.

The appellants have assailed the award dated 3.10.2001 passed by Additional District Judge, Solan, in Land Reference Petition No.1-S/4 of 1998, titled as Ajudhiya Devi and another vs. HPSEB and others, whereby compensation awarded by the Land Acquisition Collector has been enhanced to Rs.12,250/- per biswa.

The respondents land comprised in Khasra No. 123/1, 290/124/1, measuring 4 Biswas, situate in Village Nagar Sinhawan, Tehsil Arki, District Solan, HP, was acquired by issuance of Notification dated 8.10.1993 issued under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to Act) for public purpose i.e. construction of 132 KV

transmission line from Gaggal to Kunihar via Nagar Sihawan, Tehsil Arki, District Solan, H.P. Final award was also passed.

Learned counsel for the appellants has vehemently argued that the Court below has not taken into consideration the sale deeds Ex.RW-1/B, RW-1/C and RW-1/D placed on record by the appellants and the amount awarded is far in excess what is the fair market value.

In order to prove their case respondents produced witnesses, who exhibited certain sale deeds and average sale survey reports.

PW-1 Suresh Chand Sukla, Patwari Halqua Kunihar has proved Ex.PW-1/A the certificate issued by him to show that as per the record the assessed value of the land in and around the area in question w.e.f. 1.10.1992 to 30.9.1993 is Rs.12,250/- per biswa. He is a government official and his statement has not been seriously disputed by the appellants herein. PW-2 Shri Ram Lal Chauhan, has proved the certified copy of sale deed dated 22.10.1992, Ex.PW-2/B. In terms thereof 2 Biswas of land was sold at a sum of Rs.12,250/- per biswa. The sale pertains to the same village and area where the acquired land is situated. PW-3 Shri Naveen Thakur, PW-4 Sohan Lal, PW-5 Ramesh Kumar, PW-6 Shri Balwant Singh have all deposed that the sale in terms of Ex.PW-2/B is genuine and the market value of the land in fact is Rs.50,000/- per biswa. They have in one voice stated that the claimants had developed the land in question and had in fact spent a huge amount of approximately Rs.20,000/- for developing the same. PW-4 Shri Sohan Lal has in fact stated that the acquired land is situate at a distance of 60 ft. from the road and the statement of this witness is un rebutted.

Statements of RW-1 Laxmi Chand, RW-2 Salig Ram, RW-3 Shri P.C.Sharma and RW-4 Smt. Leela Devi would show that the sale deeds Ex.RW-1/B, RW-1/C and RW-1/D belong to Village Khanol, whereas the

acquired land falls in Village Nagar Sinhawan. Therefore, the same have rightly not been considered by the Additional District Judge while passing the impugned award.

I have perused the record and I am quite convinced that the statements of the witnesses as also the average assessed value of the land as entered by the officials of the revenue department itself would show that the value of the land has been correctly assessed at Rs.12,250/- per biswa. The acquisition proceedings were initiated in the year 1993 and the survey report pertains to the period closer to the date of acquisition. Ex.PW-2/B pertains to the period one year prior to the date of the initiation of the acquisition proceedings. It is not disputed that the prices are increasing.

It has come on record in the statement of PW-4 that the land in question is situated adjoining the link road and the office of Medical Officer, Animal Hospital are nearby. There is a telephone facility available and from the said, it can, therefore, be said that the acquired land has potentiality of growth and value.

The market value means the price that a willing purchaser would pay to the willing seller for a property having due regards to its existing condition, with all its existing advantages and its potential possibilities when laid out in the most advantageous manner excluding any advantage due to the carrying out of the public purpose for which property is compulsorily acquired. The market value of the acquired land has been correctly assessed in the impugned award.

For the foregoing reasons, I am of the considered view that, as is sought to be argued by the learned counsel for the appellants, there is no infirmity, illegality or perversity in the award and the appeal is accordingly dismissed.

Cross-objections No.352 of 2004

The cross-objections are on the point that while passing award dated 3.10.2001 in Land Reference Petition No.1-S/4 of 1998, titled as Ajudhiya Devi and another vs. HPSEB and others, the Court below has not awarded interest and 30% solatium on the enhanced market value in accordance with the ratio of law laid down by the Apex Court in *Sunder vs. Union of India*, reported in (2001) 7 SCC 211.

The Apex Court in the said judgment has held as under:-

- “24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount under Section 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest under Section 34 was not in the contemplation of the legislature when that section was framed or enacted.
27. In our view the aforesaid statement of law is in accord with the sound principle of interpretation. Hence the person

entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.”

Keeping in view the aforesaid observations of the Apex Court, it is directed that respondents shall also be entitled to all statutory benefits on all the enhanced amounts in accordance with law. Cross-objections are allowed accordingly. The award dated 3.10.2001 passed by learned Additional District Judge, Solan, in Land Reference Petition No. 1-S/4 of 1998, titled as Ajudhiya Devi vs. H.P.S.E.B. and others, is modified to the aforesaid extent.

18th July, 2007
(C)

(Sanjay Karol),
Judge